



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

VALLEY REGIONAL OFFICE

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Preston Bryant
Secretary of Natural Resources

David K. Paylor
Director

R. Bradley Chewning, P.E.
Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION

SPECIAL ORDER BY CONSENT

ISSUED TO

Skyline Swannanoa, Incorporated, Augusta County, Virginia

(VPDES Permit No. VA0028037)

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code § 62.1-44.15(8a) and (8d), between the State Water Control Board and Skyline Swannanoa, Incorporated, for the purpose of resolving certain alleged violations of environmental laws and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.

4. "Director" means the Director of the Department of Environmental Quality.
5. "Order" means this document, also known as a Consent Special Order.
6. "Skyline" means Skyline Swannanoa, Incorporated, the owner and operator of the Facility.
7. "Facility" means Skyline Swannanoa Sewage Treatment Plant, the facility located in Augusta County, Virginia.
8. "VRO" means the Valley Regional Office of DEQ, located in Harrisonburg, Virginia.
9. "Permit" means Virginia Pollutant Discharge Elimination System Permit No. VA0028037, which became effective June 25, 2001 and expires June 25, 2006.
10. "NOV" means Notice of Violation.
11. "Regulation" means the VPDES Permit Regulation 9 VAC 25-31-10 et seq.

SECTION C: Findings of Fact and Conclusions of Law

1. Skyline owns and operates the Facility located in Augusta County, VA. The Facility is subject to the Permit and discharges to an unnamed tributary of the South River, Potomac River Basin and the Shenandoah River Subbasin.
2. On May 3, 2005 DEQ issued Warning Letter W2005-05-V-1005 to Skyline for failure to discharge in accordance with the VPDES Permit:
 - A. February 2005
 - (1) pH Minimum – 6.5 SU required with 6.4 SU reported.This is a violation of 9 VAC 25-31-50 and Part I.A. of the Permit.
3. On August 12, 2005 DEQ issued Warning Letter W2005-08-V-1015 to Skyline for failure to discharge in accordance with the VPDES permit:
 - A. June 2005
 - (1) Chlorine Inst. Tech. Minimum – 0.6 mg/l required with 0.5 mg/l reported.This is a violation of 9 VAC 25-31-50 and Part I.A. of the Permit.
4. October 17, 2005 DEQ issued Warning Letter W2005-10-V-1007 to Skyline for failure to discharge in accordance with the VPDES permit:
 - A. August 2005
 - (1) Zinc (Total), Concentration Average – 133 µg/l required with 280 µg/l reported.
 - (2) Zinc (Total), Concentration Maximum – 133 µg/l required with 280 µg/l reported.This is a violation of 9 VAC 25-31-50 and Part I.A. of the Permit.

5. On November 9, 2005 DEQ issued Warning Letter W2005-11-V-1013 to Skyline for failure to discharge in accordance with the VPDES permit:

A. September 2005

- (1) Zinc (Total), Concentration Average – 133 µg/l required with 293 µg/l reported.
- (2) Zinc (Total), Concentration Maximum – 133 µg/l required with 293 µg/l reported.
- (3) pH Concentration Minimum - 6.5 SU required with 6.4 SU reported.
- (4) TSS Concentration Maximum – 22.5 mg/l required with 25.4 mg/l reported.

This is a violation of 9 VAC 25-31-50 and Part I.A. of the Permit.

6. On December 21, 2005 DEQ issued Notice of Violation W2005-12-V-0006 to Skyline for failure to discharge in accordance with the VPDES permit:

A. May 2005

- (1) TSS Concentration Maximum – 22.5 mg/l required with 28.0 mg/l reported.
- (2) Chlorine Inst. Res. Max. Concentration Maximum – 0.010 mg/l required with 1.0 mg/l reported.
- (3) Chlorine Inst. Tech. Min. Concentration Minimum – 0.6 mg/l required with 0.3 mg/l reported.

B. June 2005

- (1) Chlorine Inst. Tech. Min. Concentration Minimum – 0.6 mg/l required with 0.5 mg/l reported.

C. August 2005

- (1) Zinc (Total), Concentration Average – 133 µg/l required with 280 µg/l reported.
- (2) Zinc (Total), Concentration Maximum – 133 µg/l required with 280 µg/l reported.

D. September 2005

- (1) pH Concentration Minimum - 6.4 SU reported with 6.5 SU required.
- (2) TSS Concentration Maximum - 25.4 mg/l reported with 22.5 mg/l required.
- (3) Zinc (Total), Concentration Average - 133 µg/l required with 293 µg/l reported.
- (4) Zinc (Total), Concentration Maximum - 133 µg/l required with 293 µg/l reported.

E. October 2005

- (1) TSS Concentration Maximum - 22.5 mg/l required with 33.9 mg/l reported.
- (2) Zinc (Total), Concentration Average - 133 µg/l required with 171 µg/l reported.
- (3) Zinc (Total), Concentration Maximum - 133 µg/l required with 171 µg/l reported.

These are violations of 9 VAC 25-31-50 and Part I.A. of the Permit.

7. On February 21, 2006 DEQ issued Notice of Violation W2006-02-V-0015 to Skyline for:
- A. Failure to discharge in accordance with the VPDES permit in December 2005:
 - (1) TSS Concentration Maximum - 22.5 mg/l required with 28.1 mg/l reported.
 - (2) Chlorine Inst. Res. Max. Concentration Average - 0.008 mg/l required with 0.151 mg/l reported.
 - (3) Chlorine Inst. Res. Max. Concentration Maximum - 0.010 mg/l required with 4.900 mg/l reported.
 - (4) Chlorine Inst. Res. Max. Concentration Minimum - 0.6 mg/l required with 0.46 mg/l reported.

These are violations of 9 VAC 25-31-50 and Part I.A. of the Permit.

- B. Department records indicate that Skyline submitted an incomplete application for reissuance. The complete application for reissuance was due on or before December 25, 2005 and was not deemed to be complete until February 9, 2006. This is a violation of 9 VAC 25-31-50 and Part II.M. of the Permit

8. On March 17, 2006 DEQ issued Notice of Violation W2006-03-V-0010 to Skyline for failure to discharge in accordance with the VPDES permit:

- A. January 2006:
 - (1) Zinc (Total), Concentration Average – 133 µg/l required with 260 µg/l reported.
 - (2) Zinc, Total Concentration Maximum – 133 µg/l required with 260 µg/l reported.

This is a violation of 9 VAC 25-31-50 and Part I.A. of the Permit.

9. Skyline has corrected the following violations:

- A. The pH and chlorine limit violations have been addressed through training and the implementation of proper operational procedures to ensure that proper effluent limits are maintained.
- B. Skyline submitted an application for permit reissuance that was deemed to be complete February 9, 2006.

10. The remaining violations are addressed in appendix A.

11. Skyline does not admit the findings of fact and conclusions of law set forth above; however, it desires to resolve these alleged violations and comply with the applicable laws, regulations and the Permit. Accordingly Skyline agrees to enter into this Consent Special Order and pay the civil charges assessed herein.

SECTION D: Agreement and Order

1. Accordingly, the Board, by virtue of the authority granted it in Va. § 62.1-44.15(8a) and (8d), orders Skyline, and Skyline agrees, to perform the actions described in this Order.
2. Within 30 days of the effective date of this Order, Skyline shall pay a civil charge of **\$6,500** in settlement of the violations alleged in this Order. Payment shall be by check, certified check, money order, or cashier's check payable to "Treasurer of Virginia" and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

Skyline shall also include its federal identification number (FIN) with the check, certified check, money order, or cashier's check and shall include a note that payment is being made in pursuant to this order.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Skyline for good cause shown by Skyline or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically alleged herein in Section C. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent enforcement actions with respect to this Order, Skyline admits the jurisdictional allegations contained herein, and agrees to waive its right to appeal this Order; however, Skyline does not admit the factual findings, and conclusions of law contained herein.
4. Skyline consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Skyline declares it has received fair and due process under the Administrative Process Act, Va. Code §2.2-4000 *et seq.*, and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.

6. Failure by Skyline to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Skyline shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Skyline shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Skyline shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Director of the Valley Regional Office within 24 hours of learning of any condition above, which Skyline intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

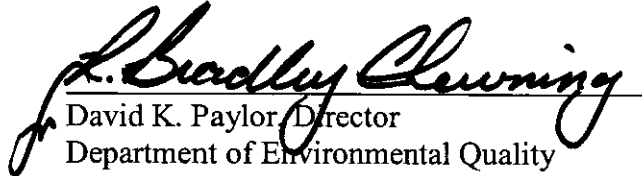
9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Skyline. Notwithstanding the foregoing, Skyline agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. Skyline petitions the VRO Director to terminate the Order after it has completed all requirements of this Order, and the Regional Director determines that all requirements of the Order have been satisfactorily completed; or
 - b. The Director, his designee, or the Board may terminate this Order in his or its sole discretion upon 30 days written notice to Skyline.

Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve Skyline from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

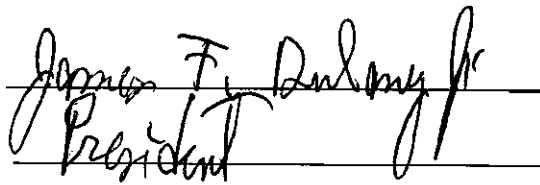
12. The undersigned representative of Skyline certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Skyline to this document. Any documents to be submitted pursuant to this Order shall be submitted by a responsible official of Skyline.

13. By its signature below, Skyline voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of Dec 18, 2006.


David K. Paylor, Director
Department of Environmental Quality

Skyline agrees to the issuance of this Order.

By: 
Title: President
Date: 6-16-06

Commonwealth of Virginia

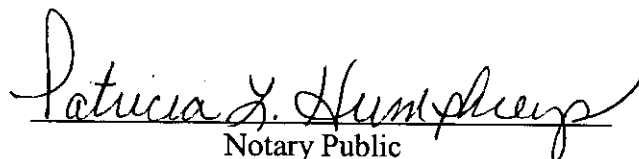
City/County of Rockingham

The foregoing document was signed and acknowledged before me this

16th day of June, 2006, by James F. Dulaney, Jr.
(name)

who is President of Skyline on
(title)

behalf of said company.


Notary Public

My commission expires: March 31, 2008

APPENDIX A
Skyline Swannanoa
VPDES permit VA0028037
Compliance Plan and Schedule

Skyline shall:

1. Remove accumulated solids in secondary clarifier units by June 30, 2006.
2. Remove and repair or replace waste sludge pump station sludge pump, and inspect and repair or replace associated piping and lines as needed by July 31, 2006.
3. Implement a sampling plan by July 15, 2006, to identify the sources or sources of elevated zinc levels.
4. Submit a report detailing the findings of #3 above to DEQ for review and approval by September 1, 2006. The report shall include an action plan and schedule to address zinc violations.
5. Operate the Facility in a workmanlike fashion so as to comply with the terms and conditions of the Permit.

Upon DEQ's approval of action plan and schedule in #4, the plan and schedule shall become an enforceable part of the order.